Olivier D. L. DuPont (OD-2817) DEORCHIS & PARTNERS, LLP 61 Broadway, 26th Floor New York, New York 10006-2802 (212) 344-4700

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
MEDITERRANEAN SHIPPING COMPANY, S.A.

ECF CASE

Plaintiff,

Case No. 08cv1908 (RMB)

- against -

SUNNY LIGHT, INC. D/B/A SUNNY LIGHT COMPANY and SHANGHAI QIU XIN CO., LTD.,

VERIFIED COMPLAINT AND RULE B ATTACHMENT

Defendants.

Plaintiff MEDITERRANEAN SHIPPING COMPANY, S.A. ("MSC"), by its attorneys, DeOrchis & Partners, LLP, as and for its Complaint against Defendants SUNNY LIGHT, INC. A/K/A SUNNY LIGHT COMPANY ("SUNNY LIGHT") and SHANGHAI QIU XIN

CO., LTD., ("SHANGHAI CO."), alleges upon information and belief, as follows:

JURISDICTION AND VENUE

- 1. This is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1333. This Court may exercise supplemental jurisdiction over MSC's state law claims pursuant to 28 U.S.C. § 1367.
- 2. Venue is proper under 28 U.S.C. §§ 1391 (c) and article 2(b) of MSC's bill of lading.

PARTIES

- 3. At and during all times hereinafter mentioned, Plaintiff MSC was and still is a foreign corporation organized and existing under and by virtue of the laws of the State of Switzerland, with an office and principal place of business located at 40 avenue Eugene Pittard, Geneva, CH-1206, Switzerland. MSC, at all times hereinafter mentioned, was engaged in the business of ocean transportation services.
- 4. Upon information and belief, Defendant SUNNY LIGHT was and still is a corporation organized and existing under and by virtue of the laws of one of the state of the U.S. with an office and principal place of business located at 39 Bellevue avenue, Appleton, 54913 Wisconsin. SUNNY LIGHT, at all times hereinafter mentioned, was engaged in the business of buying and selling groceries.
- 5. Upon information and belief, Defendant SHANGHAI QIU XIN CO., LTD. was and still is a corporation organized and existing under and by virtue of the laws of China with an office and principal place of business located at no. 220 Jiadang Road, Jiading Dist., Shanghai, China. SHANGHAI QIU XIN CO., LTD., at all times hereinafter mentioned, was engaged in the business of import and export.

BACK GROUND FACTS

6. On or about March 17, 2005 MSC issued bill of lading MSCUNC456950 for the transportation by sea of two containers bearing serial numbers MSCU8737393 and MSCU8242558 containing bales of "pulp adult disposable diapers" from New York to Shanghai, China. Attached hereto as Exhibit A is a true and accurate copy of bill of lading MSCUNC456950 and its terms and conditions.

- 7. The containers were shipped freight prepaid by defendant SUNNY LIGHT.
- 8. The shipment arrived in Shanghai, China and was unloaded by MSC on or around April 24, 2005. However, the consignee, defendant SHANGHAI CO, failed to pick up the containers with Chinese customs.
- Plaintiff sent a notice of abandonment to the Defendants on or around May 27,
 2005.
- 10. Defendant SUNNY LIGHT asked Plaintiff for a waiver of the demurrage and that the containers be shipped back to the United States.
- A request to Chinese customs for the return of the containers to the United
 States was not approved on or around January 2006.
- 12. A first provisional invoice for demurrage charges were sent to defendant SUNNY LIGHT on or around January 13, 2006.
- 13. On or around May 31, 2007, Plaintiff informed defendant SUNNY LIGHT that Chinese Customs required Plaintiff to destroy the shipment in Shanghai and that the cost for the destruction would represent about \$13,341.00.
- 14. On June 28, 2007, Plaintiff informed defendant SUNNY LIGHT that the shipment had been destroyed and that it was responsible for those charges.
- 15. Plaintiff sent its final invoice for an amount of \$89,800.00 for demurrage charges and destruction costs associated with the shipment transported under bill of lading MSCUNC456950 on July 11, August 10 and September 6, 2007.

- 16. On November 19, 2007, Plaintiff's counsel sent a letter to defendant SUNNY LIGHT requesting the payment of \$89,800.00 and advising that legal action would be taken in the absence of a full payment.
 - 17. Plaintiff has not received payment.

AS FOR A FIRST CAUSE OF ACTION FOR PAYMENT OF CHARGES INCURRED BY PLAINTIFF AS AGAINST ALL DEFENDANTS

- 18. Each and every one of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.
- 19. The terms of the bill of lading MSCUNC456950 govern the contractual relationship between Plaintiff and the Defendants.
- 20. The Defendants are liable to Plaintiff under sections 21, 23, 24 and 30 of the bill of lading for all demurrage charges and charges associated with the destruction of the shipment at the port of arrival.
 - 21. The Defendants never contested the existence of the charges.
- 22. Plaintiff seeks payment of the charges incurred in the amount of \$89,800.00 for unpaid demurrage charges and charges associated to the destruction of the shipment under the terms of its bill of lading MSCUNC456950.

AS FOR A SECOND CAUSE OF ACTION FOR QUANTUM MERUIT AS AGAINST ALL DEFENDANTS

- 23. Each and every one of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.
 - 24. Plaintiff incurred charges for the Defendants.
 - 25. These charges are in the amount of \$89,800.00.

- 26. The Defendants failed to pay Plaintiff of its charges.
- 27. By reason of the foregoing, Plaintiff suffered damages in a sum of \$89,800.00.
- 28. Plaintiff respectfully requests that this Court enter judgment in favor of Plaintiff and against the Defendants, and further, award Plaintiff its fees and costs and additional relief as this Court deems just.

APPLICATION FOR ISSUANCE OF A RULE B ATTACHMENT

- 29. Each and every one of the foregoing allegations is incorporated herein by reference and reasserted as though fully set forth at length.
- 30. The Defendants cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, the Defendant has, or will have during the pendency of this action, assets within this District and subjects to the jurisdiction of this Court, held in the hands of garnishees including, but not limited to, HSBC (USA), Bank of America, Wachovia, Citibank, American Express Bank, J.P. Morgan Chase, Bank of New York, Deutsche Bank, UBS, and/or Standard Chartered Bank, which are believed to be due and owing to the Defendants.
- 31. The total amount sought to be attached by Plaintiff pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims is \$89,800.00, plus interest and costs, calculated as follows:
 - (i) Demurrage charges and charges associated to destruction of shipment paid by Plaintiff: \$89,800.00
 - (ii) Pre-judgment interest at 9% from 07/11/2007 to 02/07/2008: (210 days/365 days * \$89,800.00 @ 9%)

\$4,649.91

Total: \$94,449.91

32. Plaintiff respectfully seeks an Order from this Court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching any assets of the Defendants, held by the aforesaid garnishees for the purpose of obtaining personal jurisdiction over the Defendants, and to secure and/or satisfy Plaintiff's claims as described above.

WHEREFORE, Plaintiff prays:

- (a) For a Judgment to be entered in favor of Plaintiff on each and all of the Causes of Action above;
 - (b) For a Judgment awarding Plaintiff damages;
- (c) For a Judgment awarding Plaintiff its reasonable costs and expenses, including attorneys' fees incurred in connection with the prosecution of this action to the extent allowed by law;
- (d) For a Judgment awarding Plaintiff such other and further relief as the Court may deem just and equitable;
- (e) That process in due form of law issue against each one of the Defendants, citing each to appear and answer under oath all and singular the matters alleged in the Complaint;
- (f) That since the Defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and

Maritime Claims, attaching all tangible or intangible property in whatever form or any other funds held by any garnishee, including, but not limited to, HSBC, Bank of America, Wachovia, Citibank, American Express Bank, J.P. Morgan Chase, Bank of New York, Deutsche Bank, UBS, and/or Standard Chartered Bank, which are believed to be due and owing by the Defendant, in the amount of \$94,449.91 to satisfy and/or secure Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B to answer the matters alleged in the Complaint;

(j) That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof.

Dated: New York, New York February 7, 2008

DEORCHIS & PARTNERS, LLP Attorneys for Plaintiff

Bv:

Olivier D. L. BuPont (OD-2817)

61 Broadway, 26th Floor

New York, New York 10006-2802

(212) 344-4700

VERIFICATION

Olivier D. L. DuPont declares and states that he is a member of the law firm of DeOrchis & Partners, LLP, attorneys for Plaintiff in this action, and that the foregoing Verified Complaint is true to his knowledge, except as to matters therein stated on the information and belief and as to those matters, he believes them to be true; that the ground of his belief as to all matters not stated upon knowledge is information furnished to him to by Plaintiff; that the reason why the Verification is not made by Plaintiff is that Plaintiff is a corporation whose principal place of business is outside the New York County, and that due to the exigent nature of this proceeding it was not possible to obtain a Verification from Plaintiff; and that he is authorized to so verify.

I declare and state under penalty of perjury that the foregoing is true and correct.

Executed on February 7, 2008

Olivier D. L. DuPont

EXHIBIT A

(Bill of lading MSCUNC456950 and terms and conditions)

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(8) SERVICE CONTRACT No.			AMERICA LLC ONE FIRST AVENUE, SUITE 100					
			West Reading, PA 19611	FMC #: 16991F				
United States				11107, 100211				
(14) CARRIER'S RECEIPT (Continue attached Bill of Lading Rider page(s).			(13) All details shown in 80x 13 are lumished Carrier, who has no means to verify their corr	d by the Shippers, being their Memoranda rectness and does not acknowledge them.	Quantity, Condition, Contents a The statements of the Shippers	ind all other information shown in Box in Box 13 do not engage the Carrier of	c 13 are unknown to the contractually or in any	
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- 17. CONTAINERS. The Merchant shall have the responsibility for inspecting before use any container furnished by the carrier to associate in sestability for the purpose of the carriage of the Merchant's goods and to ascertain that it is clean and intact. Acceptance of the container to the third that is point and are evidence of at a substituty and good condition. If the shapes or in association the containing the Merchant shall be price affected and it is substitutely and good for the state of the property of the containing the Merchant shall be responsible for proper screepe and securing of the goods to traver ventilation and to avoid editing. The Carrier sets be independently and the containing the containing the security of the goods to the property of the any stept to post to their imposts of the stiffing or security. The Merchant is also reversely to describe the substitution of the containing the security of the security of the Merchant's pargo.
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- 23. CHARGES. All expenses for tablying, measuring, weighing, faring, repairs, repackaging, sewing sit. their to exceed beyond Carrier's liability, outsions and other duties and/or formethes statistic duties, warmps and at suta charges, are always for account of the carry. The Datish Carry duty, is the port of Depenhagen and Deniesh provincing ports to be paid by receivers. Londing and demonstrating tax his. 4 done to exage inward at French, Tablesta, Algering and Monocan ports are for consigner's spoorule. It, by order of the Authorities of any place, the Container has to be opened for this goods to be inspected, the Container has to be opened for this goods to be inspected, the Container has to be opened for this goods to be inspected, the Container has to be opened to the goods as a result of expense, superburking, improving or improved the container has represent shall be entired to represent a superior of the Container has determined to recover from the Merchant at and any occasi prested to the above operations.
- 24. CUSTOMS, ETC. The Stripper and Memberst anchor their Agents and Servants industing Freight Forwarders shall comply with all Statistics, Pickins Feet and Customs regulations, reliable to the cargo, applicable in ast ports under this Carriego, and shall pay and/or indominally the Carrier for all costs and projections in consequences of the non-corriginance with such applications. Furthermore, the Membersh shall be granted to indemistly the Carrier for all costs, and projections in the generality of the foreigning, changes are not available on carriage control activities. Improve inspects for the generality of the foreigning, changes and for equipment activities are supported by the stripper in addition the Membersh is responsible for any of the all deviament lines are all results, included and the support the project the control. The Carrier shall not be included and the support the project the project the project the project project in a control of the project proj
- 25. SECURITY AND LIER. (If the height and any further charges or expenses his ared by the Content that are due, here not been paid or in case the height in psynthelity is party of her than the received, socialisty height to be preseld, and if advise of payment has not set been received. In other course is at its expense the secret payment of the manner of second or other sectioners secretly before the discharge of the cargo is dominanced to demand a deposit or estimates estimates expense to the frequency for the frequency and some payments. If no surfound deposit or other selfactuatory security is given by the Merchant, the Certimin is at inserty to discharge and store the cargo under the custody of the local secret, of the expense and at the rade of the Merchant, the carrier such laws a heart upon goods or documents, which shall survive delivery, for any claims or amounts thus under the contract and coals of recovering same including secretic coals of the opening of the coals of the coals. The proceeds tall to cover the amounts due and coals and expenses sociated, the Carrier shall have be entitled to the contract that survives delivery in respect of customer's facilities of the opening the proceeds tall to cover the amounts due and coals and expenses sociated, the Carrier shall have a law upon the goods or booksness that survives delivery in respect of a customer's shall be according surm due from the Merchant, (if). The Carrier shall have a law upon the goods or booksness that survives delivery in respect of the coals of th
- 26. GENERAL AVERAGE, SALVAGE, & NEW JARON CLAURE. General Average what by adjusted, stated and action according to York. Archiver Rules 1974, uscent Rule 2011 behalf at the place selected by the Carrier, and as to frection not provided by these Rules, according to the laws and usage at the port of New York, NY, USA. Average agreement or bond or such other or cable by these Project by the Garner must be furnished before delivery of the goods. The adjustment made by the Average Adjusted shall be brinding on the Carrier and the Mechant. In the select of accordent, durings or of Gastate, before or after commencement of the vege resulting from my cause whatsives whether due to negligation or not, for which, or for the considerance of which, Carrier is not responsible, by statute, contract or observed and accordinate or according to the project of the
- OTHER STANDARD CLAUSES EXPRESSLY INCORPORATED in this 8/L are: "Waf Fink Clauses 1 and 2"... "Edit to blame size", "IG of FM Clause on Financed Responsibility in Respect of Pullation (all ships other than self properted and non-self present) are REACCO avoing a larnary 10" (2011).
- FIRE: Carrier shall not be liable for any load or damage to goods occurring at any sine, even though before loading or after disc the visses, by reasons or by means of any line whethouses, unless such line shall be caused by the actual that or privily of the Ca
- 28. MERCHANT'S WARRANTY, The Merchant hereby expressly warrants that he has proper authority in relation to the goods which are shipped under the RIT and holds the Carmie his particles in respect of any claim areing from the Shipper or Consignee not having title to the goods.
- 56. EGUIPMENT DEMURRAGE: Before wasting the Cernier allows to Maccharit three days container utilization in which, the day of collectude recovery is excussed free of demundar. In addition the Cernier allows a demundar the profession with the beriff of the invariants of destrictions and as desired by the collectude (page), counting from the day of destrings are visional. Demundated the enterthing to contain their statistics wasterness. Demundated the statistics of the Shipper and the Comignee and that pain the deviation of the Shipper and the Consignee ships are deviated and the Consignee ships and the Consignee shipse and the Consignee sh
- 31. FINAL ARRELMENT As profrequencies. Dock thereigh of Fragist Bookings of the dischient of the goods and on obes arranger, and as appared in the first Spectrum of the goods and on obes arranger, and as appared to the State of the Common of the Monthal The forms of the forms of the Common of the Monthal The forms of the forms of the International Profress of the Common of the Monthal The forms of the Common of the Monthal The forms of the International Profress of the Monthal The International Profress and the International Profress of the